IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 19TH DECEMBER 2006 / 28TH AGRAHAYANA 1928

AS.No. 659 of 1994

OS.393/1987 of I ADDL.SUB COURT, TRIVANDRUM
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APPELLANT/1ST DEFENDANT:

CENTRAL BANK OF INDIA - A NATIONALISED BANK HAVING ITS PRINCIPAL OFFICE AT NARIMAN POINT, BOMBAY AND AT SEVERAL PLACES INCLUDING TRIVANDRUM IN INDIA AND OTHER CENTRES ABORAD REP. BY THE REGIONAL MANAGER.

BY ADV. SRI.M.P.R.NAIR, DEVAN RAMACHANDRAN

RESPONDENTS/PLAINTIFF & 2ND DEFENDANT:

1. KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD., A COMPANY FULLY OWNED BY THE GOVT. OF KERALA AND REGISTERED UNDER THE INDIAN COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT T.C.NO. XI/239, KESTON ROAD, KOWDIAR, TRIVANDRUM-3.

2. YUGMA CHEMICALS LTD. - A COMPANY WITH REGISTERED OFFICE AT SURYA BHAVAN, FILM COLONY, S.M.S.HIGHWAY, JAIPUR AND ITS HEAD OFFICE AT 62A, MARWARI BAZAR, SECOND FLOOR, BOMBAY - 400 002.

BY ADV. SRI.M.PATHROSE MATHAI, K.P.SREEKUMAR

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 30/11/2006, THE COURT ON 19/12/2006 DELIVERED THE FOLLOWING:

P.R. Raman & K.P.Balachandran, JJ.

A.S.No. 659 Of 1994

JUDGMENT

Balachandran,J.

The first defendant in O.S.No.393/87 on the file of the Sub Court, Thiruvananthapuram is the appellant. The plaintiff and the second defendant in the suit are the respondents in this appeal.

2. Reference to the parties are being made with reference to their status before the trial court. The first respondent Kerala State Industrial Development Corporation, a company owned by Government of Kerala for industrial development in the State, as plaintiff, instituted the said suit, inter alia, alleging that its functions include financial assistance to industrial projects within the State; that for a project to manufacture Calcium Carbide at Kasargode in Kerala State, the second defendant company applied for financial

assistance, which was sanctioned by the plaintiff as a short term loan of Rupees Fifteen lakhs. The terms of sanction of the said short term loan were communicated to the second defendant by the plaintiff vide Exhibit A1 letter dated 2.12.1985. Thereunder, the second defendant was required to furnish a bank guarantee for repayment of the loan to the plaintiff. The first defendant accepting all the terms under which the loan was sanctioned vide Exhibit A1, furnished the required bank guarantee vide Exhibit A2 on 14.12.1985. The said guarantee restricted the liability of the first defendant to Rupees fifteen lakhs only. Therefore, the plaintiff disbursed Rs.13,50,000/- to the second defendant on 19.12.1985, so as to limit the liability, including interest, to Rupees fifteen lakhs, which alone would be the liability guaranteed by the first defendant. The second defendant defaulted repayment of the loan. Consequently, the plaintiff invoked the bank

guarantee making demand for payment to the first defendant. The first defendant acknowledged the receipt of letters of demand on 14.6.1986. As per the terms of Exhibit A2 guarantee, the first defendant was liable to pay the amount on 19.6.1986. However, the first defendant did not make payment promptly, but entered into dilatory correspondence with a view to wriggle out of the liability. On 16.3.1987, the plaintiff issued suit notice to the first defendant. Thereupon, the first defendant forwarded two Demand Drafts totalling to Rupees fifteen lakhs under Exhibit A5 letter, stating that the payment is in full and final settlement of the claim arising out of the guarantee. The said drafts were taken to the account of the plaintiff on 10.4.1987. Though the liability was below Rupees fifteen lakhs, at the time of invoking the bank guarantee, as on the date of payment, the balance amount due to the plaintiff was Rs.2,18,960/-. The said amount would not have

accrued had the first defendant honoured his liability and made payment under Exhibit A2 guarantee at the appropriate time. In the circumstances, both the defendants are liable to pay to the plaintiff the said amount with interest at 18% per annum and penal interest at 2% in case of default in payment, compounded half yearly. On the above allegations, the plaintiff prayed for a decree for recovery of Rs.2,35,795/- with interest from the defendants.

3. The second defendant remained ex parte. The first defendant Central Bank of India filed written statement. Their contentions are the following:

The first defendant has not accepted the terms of sanction of the loan disbursed to the second defendant. It is only that at the request of the second defendant, the first defendant furnished Exhibit A2 bank guarantee on 14.12.1985. The undertaking of the first defendant under Exhibit A2

was to pay to the plaintiff on demand an amount not exceeding Rupees fifteen lakhs against any loss or damage caused or suffered by the plaintiff by reason of breach of the terms and conditions of the loan by the second defendant. On default of the second defendant, the plaintiff invoked the bank guarantee by their letter dated 9.5.1986. The said letter was duly acknowledged by the first defendant on 14.6.1986. The limit of liability of the first defendant is restricted to Rupees fifteen lakhs under Exhibit A2 guarantee and there is no provision for payment of interest on the amounts guaranteed in case of delay in payment of the amount by the first defendant Bank. Hence, the first defendant is not liable for any interest. There is no wilful delay or default on the part of the first defendant in paying Rupees fifteen lakhs covered by Exhibit A2 guarantee. After the guarantee was invoked by the plaintiff, there was a series of correspondence and personal contacts

between the plaintiff and the second defendant regarding taking over of the second defendant's unit by Sri.Toila Associates, introduced by the second defendant to the plaintiff and the plaintiff had a detailed discussion on that matter on 30.9.1986 with Sri.Toila Associates. As they had to sort out certain other issues as well, the plaintiff was willing to extend the period of repayment of the loan availed of by the second defendant. The plaintiff wanted payment of the amount covered by Exhibit A2 guarantee only if the Bank was not willing to extend the guarantee for a like period as in the original guarantee document and the first defendant was prepared to extend the guarantee for the like period. The plaintiff was willing to extend the guarantee period for another six months from 14.6.1986. The first defendant sent a letter on 31.1.1987 to withdraw the claim advanced as per the guarantee. To the said letter, the plaintiff sent a reply on 12.2.1987 stating

that they could not agree to the suggestion and wanted the first defendant to settle the claim. There was no claim for interest advanced by the plaintiff in Exhibit A4 letter. On receipt of the notice, the first defendant sought permission from its Deputy General Manager and its Bombay office for instruction from them as to whether the Bank may settle the claim by opening a separate loan account in the name of the second defendant to deposit funds with the Bank for meeting the guarantee claim. The plaintiff received Rupees fifteen lakhs in full and final settlement of the claim. They collected that amount without any demur or protest. There is no agreement by the first defendant to pay any interest. Even if there is any such agreement between the plaintiff and the second defendant, the same does not bind the first defendant, whose liability is restricted to a maximum of Rupees fifteen lakhs vide Exhibit A2 guarantee. The first defendant was not at all

responsible for the delay caused because the plaintiff was doing correspondence and discussions with the second defendant for entrusting the industrial unit to a new management. If at all any amount is due to the plaintiff by way of interest, the same has to be realised from the second defendant. On the above contentions, the first defendant prayed for a dismissal of the suit with costs.

4. On the above pleadings, the court below raised necessary issues for trial and after trial and considering the evidence adduced, which consisted only documentary evidence Exhibits A1 to A8 and B1, decreed the suit as prayed for as against both the defendants. Hence this appeal by the aggrieved first defendant.

5. It is contended before us by the learned counsel for the appellant/first defendant that the liability under Exhibit A2 bank guarantee is restricted to the maximum amount of Rupees fifteen

lakhs and any amount due above the said amount cannot be sought to be recovered from the appellant and that, if at all there is any further amount due to the first respondent/plaintiff, the liability for the same is only for the second respondent/ second defendant, who is one, who has availed of loan from the plaintiff. It is true that Exhibit A1 letter of sanction contains the conditions under which loan was sanctioned to the second defendant. The conditions, inter alia, included a condition that the second defendant has to furnish bank guarantee for the loan amount to be disbursed. It was, accordingly, that Exhibit A2 bank guarantee was caused to be executed at the instance of the second defendant by the first defendant. If at all there is any delay on the part of the first defendant Bank to make payment of the amount covered by Exhibit A2 bank guarantee, which has resulted in accruing of further interest above Rupees fifteen lakhs in the loan account of the

second defendant, the grievance in that behalf is for the second respondent and not for the plaintiff. The plaintiff again attempted to fasten that liability on the first defendant Bank as well, as it would be the liability in excess of the amount guaranteed under Exhibit A2. The question as to whether the appellant Bank would be liable for damages to the second defendant is not a matter for consideration in the present suit, especially when the second defendant has chosen to remain ex parte and no contention at all is advanced from his side in the matter. The learned counsel for the first respondent was not able to substantiate as to how they can fasten the liability on the appellant for any amount in excess of Rupees fifteen lakhs, especially when the relationship the appellant has with them is only that arising out of Exhibit A2 bank guarantee furnished at the instance of the second respondent/second defendant. The first defendant has issued Exhibit A2 limiting its

liability to Rupees fifteen lakhs. The plaintiff is, hence, not entitled to fasten any further liability on the first defendant Bank based on Exhibit A2 bank guarantee.

In the result, in reversal of the decree of the court below, we dismiss the suit O.S.No.393/87 on the file of the Sub Court, Thiruvananthapuram as against the appellant/first defendant, allowing this appeal. The decree as against the second defendant will stand. No order as to costs.

(P.R.Raman, Judge)

19th December, 2006

(K.P.Balachandran, Judge)

tkv

P.R.Raman & K.P.Balachandran, JJ.

A.S.No.659 of 1994

JUDGMENT

19th December, 2006